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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/803,287

03/17/2004

Paul J. Hindrichs

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ROPES & GRAY LLP  
PATENT DOCKETING 39/361  
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EXAMINER

PRONE, CHRISTOPHER D

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

03/11/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,287	<b>Applicant(s)</b> HINDRICHs ET AL.	
	<b>Examiner</b> CHRISTOPHER D. PRONE	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 79-88 and 96-104 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 79-88 and 96-104 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 85 objected to because it recites the limitation "the delivery instrumentation" in line 5. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 79, 80, 85-88, 96-98, and 102-104 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Said claims have been amended to require the use of a cannulator, but the cannulator is not disclosed in any of the drawings and is only briefly mentioned within the specification. Paragraph [0127] states that the catheter can be advanced into position with a more rigid cannulator having a shape that is optimal to gain entrance into the coronary sinus, but this is not enough information to define the structure. What is the optimal shape and how much more rigid? The optimal shape is not disclosed anywhere let alone any shape in relation to the cannulator. In view of the current figures and the minor description in the specification there is not enough support to claim a cannulator.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 79-87, 96, 97, 99, 100, 102, and 103 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosgrove WO 02/28321 A2.

Cosgrove discloses the same invention being a curved delivery instrument 24 comprising a laterally flexible portion 22, a more rigid cannulator 40, an anchor 20 and a method of inserting it comprising insertion into the coronary sinus, axial movement, and delivery of the anchor. Cosgrove further teaches that the catheter is highly flexible, which can inherently comprise sections forming compound curves with some more curved than others.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 98, 101, and 104 are rejected under 35 U.S.C. 103 as being unpatentable over Cosgrove WO 02/28321 A2 in view of Solem et al USPN 6,210,432 B1.

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Cosgrove discloses the invention substantially as claimed being described supra. However, Cosgrove does not disclose that the anchors are helical.

Solem teaches the use of implants comprising helical structure in the same field of endeavor for the purpose of adapting to the shape of implantation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the helical shaped implants of Solem with implantation device and method of Cosgrove in order to better adapt to the implantation site.

Claim 88 is rejected under 35 U.S.C. 103 as being unpatentable over Cosgrove WO 02/28321 A2 in view of Mortier et al USPN 6,332,893 B1.

Cosgrove discloses the invention substantially as claimed being described supra. However, Cosgrove does not disclose that the implant is delivered at a location outside the conduit.

Mortier teaches the use of implants comprising coiled tension anchor members, shown best in figure 19, that are delivered outside the coronary sinus in the same field of endeavor for the purpose of providing a force that aids in the reshaping of the implant site.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the helical shaped tension member and the step of delivering it outside of the coronary sinus as taught by Mortier with implantation device and method of Cosgrove in order to aid in the reshaping of the implant site.

***Response to Arguments***

Applicant's arguments with respect to claims 79-88 and 96-104 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone  
Examiner  
Art Unit 3738

/Christopher D Prone/

/Corrine M McDermott/  
Supervisory Patent Examiner, Art Unit 3738